

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: STEVE McMILLEN dba McMILLEN TRUCKING AND REPAIR; Bedford, Iowa.	ADMINISTRATIVE CONSENT ORDER NO. 2007-SW- 14 NO. 2007-AQ- 23
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TO: Steve McMillin
~~McMillin Trucking and Repair~~
**PO Box 81
Bedford, IA 50833**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Steve McMillin doing business as McMillin Trucking and Repair (McMillin) and the Iowa Department of Natural Resources (Department) in order to resolve solid waste disposal and open burning violations. Pursuant to this Order, McMillin shall pay an administrative penalty in the amount of \$500 pursuant to the payment schedule set forth herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Keith Wilken
IDNR Field Office #4
1401 Sunnyside Lane
Atlantic, IA 50002
Ph: 712-243-1934

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Admin. Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Steve McMillin is the owner and operator of McMillin Trucking and Repair at 124 Jefferson Street, Bedford, Iowa.
2. On February 23, 2007, the Department visited the McMillin site in Bedford. An open burning and open dumping site was observed just south of the McMillin Trucking and Repair facility. The burn pile contained oil filters, remnants of tires, farm equipment, automobile/truck parts, a mattress, chemical containers, a fuel tank, and other miscellaneous wastes. These materials are consistent with the waste stream from a truck service and repair business. Petroleum-contaminated soil was also observed surrounding the waste oil storage tanks on the north side of the facility. Photographs were taken.
3. A Notice of Violation was issued on March 6, 2007.
4. Subsequent to the Notice of Violation. All solid waste and burn residue was removed from the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC Chapters 100-121.
2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.
3. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC Chapters 20-30 relating to air quality.
4. Rule 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The materials burned in this case do not qualify for exemption or variance. The above facts disclose violation of this provision.

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V. ORDER

The Department orders and McMillin agrees to pay an administrative penalty in the amount of \$500 at the time of execution of this Order.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. McMillin has achieved an economic benefit from its illegal conduct. Costs avoided include disposal fees, labor, and hauling costs. The open burning of solid waste has resulted in cost avoidance. The burning of solid waste typically reduces the volume of the waste by greater than 50%. Based upon these facts and in order to resolve this matter consensually, \$100 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The illegal open dumping of solid waste threatens the groundwater of the state. ~~Open burning of solid waste releases toxic air emissions and can produce run-off that~~ pollutes the surface and ground water of the state. The burning of tires, oil filters, chemical containers, and fuel tanks releases hazardous emissions in to the air. Such open burning may violate ambient air standards. Based on the above considerations, \$1,000 is assessed for this factor.

c. Culpability. McMillin is engaged in the business of truck repair and service. The generation of trade wastes is a routine part of the operation of this business. McMillin has a duty to be aware of the applicable prohibitions against open burning of solid waste. The Department has not documented a significant history of noncompliance. Based upon these factors and the desire to resolve this matter consensually, \$400 is assessed for this factor.

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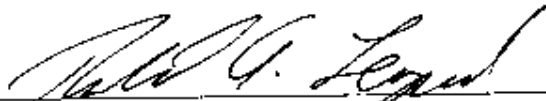
d. Mitigating factors. Due to the lack of any documented history of noncompliance and the compliance efforts undertaken by McMillin prior to the execution of this order. The Department has agreed to reduce the penalty assessed herein by \$1,000.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of McMillin. By signature to this Order, all rights to appeal this Order are waived.

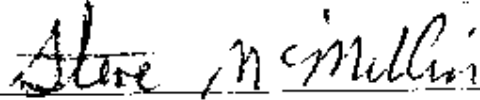
~~VIII. NONCOMPLIANCE~~

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1 day of
November, 2007



STEVE McMILLIN

Dated this 21 day of
Oct., 2007

Field Office #4; Joe Tack; VII, C.I.; V.L.C.